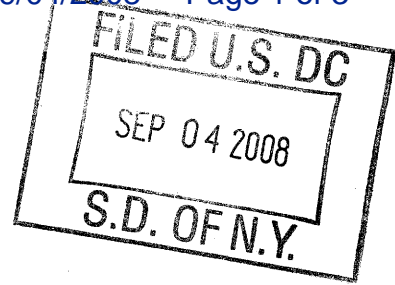


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



DEMPSEY PIPE & SUPPLY, INC.,

Petitioner,

v.

07 Civ. 7749 (PAC)

T. CO METALS LLC,

**NOTICE OF APPEAL
IN A CIVIL CASE**

Respondent.

Notice is hereby given that Petitioner Dempsey Pipe & Supply, Inc. hereby appeals to the United States Court of Appeals for the Second Circuit from the Orders of the District Court in this action dated August 5, 2008 and August 28, 2008 insofar as those Orders denied Plaintiff's motion under Rule 59(e) of the Federal Rules of Civil Procedure to amend the Judgment dated July 18, 2008 to provide for a net money judgment in favor of Petitioner based on the arbitration award that was confirmed by that July 18, 2008 Judgment.

Dated: New York, New York
September 4, 2008

MARC J. GOLDSTEIN LITIGATION AND
ARBITRATION CHAMBERS

By: Marc J. Goldstein
Marc J. Goldstein (MG-8701)

1230 Avenue of the Americas, 7th Floor
New York, New York 10020
(212) 799-8605

Attorney for Plaintiff Dempsey Pipe & Supply, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
T. CO. METALS, LLC,

Plaintiff,

-against-

DEMPSEY PIPE & SUPPLY, INC.,

Defendant.
-----X

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DATE FILED: **AUG 05 2008**

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07 Civ. 7749 (PAC)

ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

The Court has considered Dempsey Pipe & Supply, Inc.'s ("Dempsey") letter request of July 16, 2008, the response of T. Co. Metals, LLC ("T. Co.") of July 21, 2008, and the further motion filed by Dempsey on July 31, 2008 in violation of the Court's individual practices. After considering these filings, the Court denies Dempsey's request to amend the judgment to include interest on legal fees.

The Court first notes that the Arbitrator explicitly stated his intentions concerning the award of interest. (See Final Award, In the Matter of Arbitration Between T. Co. Metals, LLC and Dempsey Pipe & Supply, Inc., 20 April 2007 ¶ 159.) He allowed interest on damages claims, but did not allow it for legal fees. (*Id.*) Second, despite Dempsey's claims that denial of the current request might yield "anomalous" results and/or enforcement difficulties (Memorandum in Support of Motion to Amend the Judgment at 3), interest on legal fees is clearly a discretionary matter. Herrenknecht Corp. v. Best Road Boring, No. 06 Civ. 5106 (JFK), 2007 WL 1149122, at *3 (S.D.N.Y. April 16, 2007) ("The decision whether to grant prejudgment interest in arbitration confirmations is left to the discretion of the district court." (quotations and citation omitted)). In the exercise of its discretion, the Court denies the motion.

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DATE FILED: AUG 28

Marc J. Goldstein
Litigation
& Arbitration Chambers

Direct Dial: (212) 799-8600
Mobile: (917) 498-1230

August 5, 2008

BY ELECTRONIC MAIL

Hon. Paul A. Crotty
United States District Court
Southern District of New York
Daniel P. Moynihan U.S. Courthouse
500 Pearl Street, Suite 735
New York, New York 10007

Re: *T. Co. Metals LLC v. Dempsey Pipe & Supply Co.*, 07 CV 7747 (PAC); *Dempsey Pipe & Supply Co. v. T. Co. Metals LLC*, 07 CV 7749 (PAC) – Dempsey Request for Clarification

Dear Judge Crotty:

I write this letter to seek clarification of your Order today, and also to cure and apologize for my violation of Your Honor's individual practices.

As to the matter of clarification: Your Order today directs entry of judgment in Case 07 CV 7747, in which no judgment had previously been entered. However, while your Order today denied Dempsey's application made by letter on July 16, 2008 to include interest on the attorneys' fees portion of the Award, it does not clearly deal in a dispositive fashion with the motion made July 31 to amend the July 17 Judgment in Case 07 CV 7749. Should we consider that motion as denied, or that it remains *sub judice*, and that T. Co. should make known its position?

As to my violation of the Court's practices, I apologize again for having submitted a letter in e-mail rather than PDF format with a signature (assuming this was the violation). I had not intended to submit any letter, but at a time when I had no ability logistically to prepare and send a signed letter in PDF format, and on the last day for filing the Rule 59(e) motion, I discovered that I was ethically bound to bring to the Court's attention controlling Second Circuit authority on the post-judgment interest point, i.e. the Carte Blanche case mentioned in my e-mail. I

1230 Avenue of the Americas, 7th Floor New York, New York 10020
Fax: (212) 658-9151 Email: Goldstein@Lexmarc.us
Web: www.lexmarc.us

August 28, 2008
If the parties wish to submit a joint motion or consent for a net money judgment they may do so. The Court adheres to its prior ruling on interest on attorneys' fees. Post-judgment interest will be allowed at the statutory rate. 28 U.S.C. § 1961
As ordered
Paul A. Crotty

MEMO ENDORSED